IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.684 OF 2006

Naushad Habib Mhalhar & Ors. ...Appellants
vs.
Mariyabi Balu Mhaldar & Ors. ...Respondents

Mr.S.M.Kamble for the Appellants
Mr.R.S.Apte for the Respondents

CORAM: A.S.OKA, J.
DATED: AUGUST 2, 2006.

P.C.:

1. Heard Shri Kamble for the Appellants. The Appellants are the original Plaintiffs. A suit for perpetual injunction filed by the Appellants has been decreed by the Trial Court and the decree for perpetual injunction has been set aside by the first Appellate court.

2. Shri Kamble for the Appellants submitted that the sale deed on the basis of which the Appellants are claiming title was duly proved and in fact none of the Respondents have challenged the sale deed. He submitted that ownership of the suit property has been duly established by the Appellants and the decree could not have been set aside by the first Appellate Court.

3. I have considered the submissions. The courts below have held that the Appellants have established the ownership in respect of the property purchased under the sale deed. The finding of the Appellate Court is that the Appellants have

not established their exclusive possession. The Appellate Court after perusal of the sale deed produced by the Appellants has observed that the Appellants have purchased the property excluding 2 annas share of one Balu the husband of the first Respondent. The Appellate Court has observed that the boundaries of the property purchased by the Appellants are not specifically mentioned. The Appellate Court has held that the Appellants have not established as to which specific portion of the property is in their possession. Thus, the decree for perpetual injunction has been set aside only on the ground that the Appellants are not in exclusive possession of the suit land.

4. The finding of fact recorded by the Appellate Court as regards possession is based on appreciation of oral and documentary evidence on record and in particular the sale deed and the revenue record. There is no perversity in the said finding. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.